

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON
CIVIL MINUTE ORDER

Case Name: *N.E.D.C. v. Cascade Kelly Holdings*

Date of Proceeding: September 28, 2015

Case No.: 3:14-cv-1059-SI

Courtroom Deputy: Mary Austad

Presiding Judge: Michael H. Simon

Counsel for Plaintiff(s): J. Brimmer and A. Hawley

Court Reporter: Dennis Apodaca

Counsel for Defendant(s): J. Waldron and S. Cotton

DOCKET ENTRY:

A. Trial Exhibits

1. Plaintiffs' Trial Exhibits

a. The following Plaintiffs' Trial Exhibits are received in evidence without objection: 1-6 (for standing purposes only); 7-10, 12-15, 19, 21-55, 57a, 57b, 57c, and 58-60.

b. The Court overrules Defendants' objections and receives the following Plaintiffs' Trial Exhibits: 16, 17.

c. Plaintiffs withdraw the following Plaintiffs' Trial Exhibits: 11, 18, 20, 56, and 57.

2. Defendants' Trial Exhibits

a. The following Defendants' Trial Exhibits are received in evidence without objection: 201-203, 205-217, 219-227, 229-234, 236-240, 242-246, 249-273, 274-275 (for impeachment purposes only), and 276-297.

b. Defendants withdraw the following Defendants' Trial Exhibits: 204, 218, 228, 235, 247, and 248.

c. The Court reserves ruling on the following Defendants' Trial Exhibit pending authentication: 241.

B. Trial Witnesses

1. Plaintiffs' Trial Witnesses

a. By declaration only and for standing purposes only: David Noah Greenwald (Ex. 3); John T. Krallman (Ex. 4); Tracy Prescott MacGregor (Ex. 5); Mark Riskedahl (Ex. 6); Elinor Fanning (Ex. 1); and Wanda Derby (Ex. 2).

b. By live testimony: Dr. Ranajit Sahu (expert witness). The Court addresses Defendants' objections in connection with Defendants' Motions *in Limine*.

c. Potential rebuttal witnesses by live testimony: Dr. Ranajit Sahu and Greg Grunow.

2. Defendants' Trial Witnesses (all by live testimony):

a. Mr. Chad Darby (expert witness). Plaintiffs object on the grounds that Mr. Darby "does not have any firsthand knowledge" of certain issues. Because Mr. Darby is offered as an expert witness, Plaintiffs' objections are overruled without prejudice to renew at trial. *See Fed. R. Evid. 703.*

b. Daniel Luckett (lay witness).

c. Brian Patterson, Ph.D. (lay witness). Plaintiffs object to the testimony of Dr. Patterson on two grounds. First, Plaintiffs state that Defendants list Dr. Patterson only as a lay witness and that Defendants has failed to provide expert testimony disclosures required under either Rule 26(a)(2)(B) or Rule 26(a)(2)(C) of the Federal Rules of Civil Procedure. Second, Plaintiffs object to the extent that Dr. Patterson's testimony includes his opinion regarding the legality of any permit terms. Defendants respond that Dr. Patterson's testimony will be limited to factual matters about which he has personal knowledge and that he will not be providing any opinion testimony under Rules 702, 703, or 705 of the Federal Rules of Evidence. Plaintiffs' objections are overruled as moot.

C. Defendants' Motions *in Limine*

1. Defendants' Motions *in Limine* Nos. 1-4: DENIED WITHOUT PREJUDICE

Defendants' Motions *in Limine* Nos. 1-4 raise both legal and factual arguments. Plaintiffs oppose Defendants' motions. Regarding legal matters, the parties frame the relevant questions quite differently, and they disagree over applicable legal standards. Regarding factual matters, the parties disagree over the relevance of certain evidence. Several of these legal and factual disagreements go to the core of the parties' dispute in this case. For the upcoming bench trial in this matter, the Court denies Defendants' motions *in limine* nos. 1-4 without prejudice to either side's continuing ability to argue over the applicable legal issues and standards and the relevance of any evidence.

2. Defendants' Motion *in Limine* No. 5: GRANTED.

Defendants argue that Plaintiffs' expert witness, Dr. Sahu, should be precluded from offering expert testimony not reasonably disclosed in Plaintiffs' expert report or rebuttal expert report. This motion is GRANTED. In addition, the same ruling applies to Defendants' expert witness, Mr. Darby.

D. Proposed Findings of Fact and Conclusions of Law

Defendants object to Plaintiffs' Proposed Findings of Fact and Conclusions of Law. The Court defers ruling on these objections.

E. Trial: A three-day bench trial will begin, as scheduled, on Tuesday, October 6, 2015, at 9:00 A.M. in Courtroom 13B.